

State Legislation Monitoring Report:

FY2003

Iowa Department of Human Rights
Division of Criminal and Juvenile Justice Planning

Richard G. Moore, Administrator

Primary Author:
Lettie Prell, Justice Systems Analyst

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Introduction

The Division of Criminal and Juvenile Justice Planning issued its first state legislation monitoring report in February 2002, covering the first six month's impact of Senate File 543 (which enacted a number of sentencing changes) on the justice system; monitoring of the correctional impact of this bill was at the request of several members of the legislature. Since then, the Criminal and Juvenile Justice Planning Advisory Council has requested that CJJP continue to monitor the correctional impact of enacted legislation it has deemed of particular interest. This report covers monitoring results or future plans to monitor the following laws:

- Lowered penalties for first-offense Burglary-3rd degree and Attempted Burglary-3rd (effective FY2002; see p. 3)
- Sex offender registry requirements that: a) requires registration for students and employees of institutions of higher education in the county where the institution is located, if different from the county of their residence; and b) prohibits registered sex offenders from residing within two thousand feet of an elementary or secondary school, or a child care facility (both laws effective FY2003; see p. 5)
- Lowering of the blood alcohol content for drunken driving to .08 (effective FY2004; see p. 6)
- Changes in “crack” cocaine and “powder” cocaine penalties (effective FY2004; see p. 7)
- Providing for parole eligibility at 70% of time served for persons sentenced under “85% law” provisions of *Iowa Code* Section 902.12. Also specifies a procedure for resentencing offenders currently incarcerated under this section who are not now eligible for parole at 70% of time served (effective FY2004; see p. 8).

Summary of Findings

- *First-offense Burglary-3rd degree and Attempted Burglary.* A reduction in prison admissions for burglary has occurred, due to lower imprisonment rates for these offenses. Average time served in prison has also declined for first-offense offenders. Use of jail to sanction these offenders has increased; however, average jail terms are lower than for aggravated misdemeanor attempted burglary prior to the law change.
- *Sex Offender Registry Requirements.* There has been no significant correctional impact for provisions related to higher education registry requirements. Regarding provisions prohibiting sex offenders from living near schools and child care facilities, the United States District Court for the Southern District of Iowa issued an order on July 25, 2003 which enjoined Iowa's county attorneys from enforcing this section of the *Iowa Code* until the court rules on the plaintiffs' motion for preliminary injunction in the class action case challenging the constitutionality of the law.
- *Drunken Driving .08.* Statewide OWI charges filed in the Iowa District Court increased by about 5% between July and October 2003 when compared with 2002 filings. Based on a sample of counties with available BAC information and estimates, it appears that this increase may be largely due to the law change.
- *"Crack" vs. "Powder" Cocaine Penalties.* There are no findings to report to date. CJJP will work to collect case file and other information in the upcoming year, to assist in assessment of the correctional impact of this law.
- *"85%" Law Parole Eligibility and Resentencings.* There have been no resentencings of persons currently incarcerated under the old "85% law" to date.

First-Offense Burglary-3rd Degree

Provision. The penalty for first-offense Burglary-3rd degree involving an unoccupied motor vehicle, truck or boat is reduced from a Class D felony to an aggravated misdemeanor. First-offense Attempted Burglary-3rd of vehicles and boats is reduced from an aggravated misdemeanor to a serious misdemeanor. This law was made effective beginning in FY2002.

Impact on Convictions. A total of 186 offenders were convicted of first-offense burglary-3rd during FY2002, and 280 in FY2003, rather than being convicted of a Class D felony. A small number of offenders in both years were convicted of the serious misdemeanor first-offense attempted burglary rather than being convicted of aggravated misdemeanors.

Offender-Based Convictions: Burglary-3rd degree

	FY2001		FY2002		FY2003	
	Total	Total	1st-Offense Only	Total	1st-Offense Only	
Burglary-3 rd	942	935	186 (20% of total)	1,060	280 (26% of total)	
Attempted Burglary-3 rd	232	196	6 (3% of total)	200	14 (7% of total)	

Source: Iowa Justice Data Warehouse (ICIS data)

Impact on Sentences. About 13% of offenders convicted of first-offense Burglary-3rd were sentenced to prison in FY2002; the imprisonment rate for this offense in FY2003 was about 16%. These observed imprisonment rates are similar to the imprisonment rate for aggravated misdemeanor attempted burglary prior to the law change, and lower than the imprisonment rate for Class D felony Burglary-3rd. However, a higher percentage of first-offense burglars in FY2002 received sentences involving jail time, compared with aggravated misdemeanor burglars in FY2001. Total incarceration rates for first-offense burglary-3rd in FY2002 and FY2003 are somewhat higher than the incarceration rate for attempted burglary in FY2001.

Burglary Incarceration Rates

	Burglary-3 rd (Class D)			Attempted Burglary (Agg Misd)			First-Offense Burglary-3 rd (Agg Misd)		
	FY2001	FY2002	FY2003	FY2001	FY2002	FY2003	FY2001	FY2002	FY2003
% Sentenced to Prison	32%	26%	31%	13%	13%	16%			
% Sentenced to Jail	NA	2%	2%	17%	27%	19%			
Total Incarceration Rate	32%	28%	32%	30%	40%	35%			

Source: Iowa Justice Data Warehouse (ICIS data)

Impact on Prison Admissions. The observed reduction in imprisonment rates for first-offense Burglary-3rd (when compared to Class D felony Burglary-3rd) has led to a reduction in new court-ordered prison commitments of offenders with lead offenses of Burglary-3rd, when compared with FY2001.¹ Nine offenders were admitted to prison for lead offenses of first-offense Burglary-3rd in FY2002, and 21 were admitted in FY2003. Other prison inmates were also admitted to prison for first-offense Burglary-3rd, but not as a lead offense.

New Prison Admissions: Burglary-3rd degree (Lead Offenses Only)					
	FY2001	FY2002		FY2003	
	Total	Total	First- Offense Only	Total	First- Offense Only
Burglary-3rd	279	232 (47 fewer)	9	227 (52 fewer)	21
Attempted Burglary-3rd	21	16 (5 fewer)	0	16 (5 fewer)	0
Net effect, Agg Misd Burg	--	25	--	37	--

Net effect, Aggravated Misdemeanor Burglary is calculated by adding admissions for “first offense only” Burglary-3rd and admissions for Attempted Burglary-3rd.

Source: Adult Corrections Information System

Impact on Average Length of Stay in Prison and Jail. Persons released from prison on first-offense Burglary-3rd served substantially less time in prison on average than those serving time for Class D felony Burglary-3rd. For a sample of prison releases in 2002 and 2003, average time served prior to first release for aggravated misdemeanor first-offense Burglary-3rd was six months; average time served for Class D felony Burglary-3rd was 17 months. Releases include parole, work release, sentence reconsideration, expiration of sentence, and other forms of release. “First release” is the first prison exit that occurs on the prison commitment.

Regarding offenders sentenced to jail on conviction for aggravated misdemeanor first-offense Burglary-3rd, the average length of the jail term (the portion to be actually served in jail and not suspended) was 39 days in FY2002 and 52 days in FY2003. This is substantially less than the average jail term for aggravated misdemeanor Attempted Burglary-3rd in FY2001, which was 67 days. Therefore, while first-offense burglars are being sentenced to jail more often than aggravated misdemeanor burglars in the past, their sentences are shorter on average.

¹ New prison admissions are new court-ordered commitments and probation revocations. The lead offense is the crime that holds the inmate in prison for the longest amount of time, as determined by the tentative discharge date. The lead offense is typically, but not always, the most serious offense.

Sex Offender Registry Requirements

Provisions. Effective beginning in FY2003, additional requirements placed on persons subject to registry as sex offenders are as follows:

- Registration for students and employees of institutions of higher education in the county where the institution is located, if different from the county of their residence. Violations are punishable as a serious misdemeanor for a first offense and a Class D felony for a repeat violation.
- Registered sex offenders may not reside within two thousand feet of an elementary or secondary school, or a child care facility (with some exceptions). Violations are punishable as an aggravated misdemeanor. However, on July 25, 2003 the United States District Court for the Southern District of Iowa enjoined Iowa's county attorneys from enforcing this section of the *Iowa Code* until the court rules on the plaintiffs' motion for preliminary injunction in the class action case challenging the constitutionality of the law.

Impact on Convictions: Higher Education Registration Requirements. First-offense violations of these requirements are serious misdemeanors under *Iowa Code* section 692A.7. During FY2003, there were *no* charges disposed under this provision, according to the Iowa Justice Data Warehouse. Therefore, to date, this provision has had no significant correctional impact.

Drunken Driving .08 BAC

Provision. Effective beginning in FY2004, the blood alcohol content (BAC) level for drunken driving is lowered to .08 (from .10).

Increase in OWI Charges Filed. There was an increase of about 9% in OWI-1st offense charges filed in the Iowa District Court during the first four months of FY2004, when compared with the first four months of FY2003. This increase is opposite the trend in OWI-2nd and -3rd offense charges, which slightly declined. Overall, total OWI charges increased by about 5%.

OWI Charges Filed: July-October FY2003 vs. FY2004

Original Charge	Number of Charges Filed		% Change
	Jul-Oct 2002	Jul-Oct 2003	
OWI-1st	4,180	4,545	9%
OWI-2nd	1,191	1,137	-5%
OWI-3rd	526	510	-3%
<i>All OWI</i>	<i>5,897</i>	<i>6,192</i>	<i>5%</i>

Source: Iowa Justice Data Warehouse (ICIS data)

Available BAC Level Information. Statewide BAC level information is not readily available. However, BAC information and estimates for the first four months of FY2004 were obtained from 75 county attorney offices, as well as one clerk of court (available in the Iowa Justice Data Warehouse). The 76 counties reported about 228 OWI cases with BAC levels under .10, which represents about 5% of the total OWI charges filed in those counties. Based on this information, it appears that the statewide increase in OWI charges filed during the first four months of FY2004 may be largely due to the law change.

76-County Sample: Charges Filed and BAC Data for July-October 2003

	N Charges Filed	N BAC Level < .10*	%
All OWI	4,429	228	5%

*Some counties reported BAC levels between .08 and .10, while others reported levels between .085 and .105 (compensating for the BAC test margin of error).

Source: Iowa Justice Data Warehouse (ICIS data); BAC information and estimates from Iowa County Attorneys (75 counties) and the Iowa Justice Data Warehouse (1 county).

“Crack” and “Powder” Cocaine Penalties

Provision. Effective beginning in FY2004, penalties and the amounts specified in the *Iowa Code* that determine the penalty level of “crack” and “powder cocaine offenses were modified as follows:

“Crack” Cocaine

Prior to FY2004: Penalty	Current Law: Penalty	Prior to FY2004: Amount Dealt	Current Law: Amount Dealt
Class B – 50 years	Class B – 35 years	> 50 grams	> 50 grams
Class B – 25 years	Class B – 25 years	> 5 grams	> 10 grams
Class C – 10 years	Class C – 10 years	Up to 5 grams	Up to 10 grams

“Powder” Cocaine

Prior to FY2004: Penalty	Current Law: Penalty	Prior to FY2004: Amount Dealt	Current Law: Amount Dealt
Class B – 50 years	Class B – 35 years	> 5 kilograms	> 500 grams
Class B – 25 years	Class B – 25 years	> 500 grams	> 100 grams
Class C – 10 years	Class C – 10 years	Up to 500 grams	Up to 100 grams

Monitoring Plan. CJJP will collect information on type of drug involved in drug offenses from case files, for samples of drug offenders admitted to prison beginning in January 2004, to ensure that cases in the sample are representative of cases sentenced under the new law. Information regarding the amounts of drugs involved may not be available.

Also, because the new 35-year penalty (replacing the old 50-year penalty) affects other drugs in addition to cocaine, CJJP will monitor the impact of this penalty change for all drugs, focusing on changes in prison admissions and length of stay for this offense. According to the Adult Corrections Information System, there were no admissions to prison for this offense in FY2003, and none during the first three months of FY2004.

“85% Law” Parole Eligibility and Resentencings

Provisions. Effective beginning in FY2004, persons sentenced under “85% law” provisions of *Iowa Code* Section 902.12 are eligible for parole after serving 70% of their maximum terms. The law also specifies a procedure whereby the county attorney may petition the court for resentencing an offender currently incarcerated under this section, who is not now eligible for parole at 70% of time served.

Monitoring Plan. Prison admissions of persons sentenced under the “85% law” will be collected, and eventually tracked to describe how many of these serve less than 85% of their sentences. CJJP will also monitor resentencings of persons currently incarcerated under the old “85% law”, report the number of resentencings as well as releases, and compare the time actually served with the estimated time they would have served if not granted parole eligibility.

Impact to Date. Fourteen offenders were admitted to prison between July and September 2003 who were sentenced under the “85% law” but are eligible for parole after 70% of the sentence has been served. There have been no resentencings of persons currently incarcerated under the old “85% law” through November 2003.

Estimated Long-Term Impact. CJJP analysis of the potential correctional impact of these provisions estimates that 75 fewer offenders will be incarcerated at mid-year 2013 than would have otherwise been forecast (the current forecast estimates 11,925 inmates on June 30, 2013).